PROVINCE OF CANADA, } LEGISLATIVE ASSEMBLY,
QUEBEC, TO WIT: } **Lotbinière Election Committee.**

IN THE MATTER OF

JOSEPH LAURIN, ESQUIRE,

Candidate claiming Seat,

Petitioner,

AGAINST

JOHN O'FARRELL, ESQUIRE,

Sitting Member.

CASE OF THE SITTING MEMBER

ON THE

Issue of Corrupt practices by Petitioner and his authorized Agents.

THE desire of assisting the Lotbinière Election Committee in the discharge of an arduous and important duty, will offer, the Sitting Member trusts, a sufficient apology for the liberty he has taken of laying before that

Committee the present *Factum*. It will be found to contain an exact reference to the facts as proved upon the present issue, and to the law as bearing on each fact.

The *only* petition presented against the Sitting Member is from Joseph Laurin, Esquire, the unsuccessful Candidate, *for whom it claims the* SEAT. Upon the Petition being read, the Sitting Member claimed, as a preliminary objection to the Petition being entertained by the Committee, the right of adducing evidence to show that the Petitioner was ineligible upon two grounds, and *incapable of taking* or *retaining* the *seat* claimed in the Petition, viz: 1° Want of the requisite property qualification, and 2° Bribery and corrupt practices. The Committee being with the Sitting Member on that point, it was resolved by the Committee, after the Sitting Member had withdrawn his objections to the Petitioner's property qualification, that the Sitting Member might adduce evidence of bribery and corrupt practices by the Petitioner and his authorized agents at the late Election for the County of Lotbinière. Upon that decision, which should the Committee find the Sitting Member to have proved his case in that particular, will have the effect of disqualifying the Petitioner from having his Petition heard by the Committee, it is needless to dwell further than may be necessary to notice briefly the reasons and authorities which induced the Committee to adopt that opinion.

To understand the nature of the question thus submitted to, and decided by, the Committee, it is necessary to refer to the wording of the 1st section of the Provincial Statute, 14 and 15 Victoria, chapter 1 (commonly called the "Election Petitions act of 1851"). By that Statute the right, which, before the passing of precise statutes on the subject, might have been exercised by any one, of presenting Election Petitions is limited to Electors and Candidates, viz:

I In petitions from Electors,

1° To some person who voted at the election; or

2° Who had the right to vote thereat; and

II In petitions from Candidates,

1 ° To some person claiming the right to be returned or elected thereat; or

2 ° Alleging himself to have been a Candidate thereat.

It is almost superfluous to remark that, in so defining the nature of Election Petitions, and in providing for the reference of every such Election Petition to a Select Committee, the Legislature had in view a two-fold object, viz:

1 ° To restrict the right of petitioning against undue elections or returns to the persons who, in complaining of such undue elections or returns, have a direct and personal interest, viz: Electors and Candidates;

2 ° To provide a Tribunal where those Election Petitions (as distinguished from petitions not complaining of an undue election or return, or of no return, but of other matters occurring thereat) might be dispassionately tried and determined.

It follows thence that, in the progress of every such Election Petition, there are two separate and distinct stages, viz:

1 ° The decision of the House as to whether it is or is not an Election Petition, on the motion to refer it to a Select Committee;

2 ° The trial of that petition when referred to the Select Committee.

The existence of two such phases in the progress of an Election Petition necessarily presupposes.

1 ° That the House itself possesses the right (and only the right) of seeing that the Petitioner has clothed himself with the character contemplated by the Statute, by alleging an undue election or return, or the absence of a return, and his having voted or his right to vote, or his having been a Candidate, or his right to have been elected or returned, at the election,—everything in fact re-

quired by the Statute to enable him to present his Petition, and have it referred to a Select Committee;

2° That the Select Committee has the right of trying whether the garb so assumed by the Petitioner is properly his own. For the right of scrutinizing the claims of the Petitioner to the character which he so assumes, must exist somewhere; and as the constant current of decisions shews it not to exist in the House itself (1), it must be vested in the Select Committee. To suppose it to be otherwise, would be asserting that the right of a Petitioner to the character (ever so impudently) assumed by him, cannot be called in question, and that any member, the most eligible, nay the most free and indifferently chosen, may, for an indefinite length of time, be harassed by the first unscrupulous person, who, without right or title, thinks fit to assume the character of a Candidate or the guise of an Elector; it would in fact be saying that the words of the Statute, "*an Elector*," "*a Candidate*", mean "NOT AN ELECTOR", "NOT A CANDIDATE."

If the character contemplated by the Statute is therefore necessary to enable a party to present an Election Petition, or if it is also required that, in order to have his Petition heard by a Committee, a Petitioner should have such a direct and positive interest in the return of the proper person as will justify his complaining of the return of an improper person, it is equally manifest that a Petitioner, who may have once been qualified, but who subsequently loses the necessary degree of interest, or becomes divested of the character required, ceases from that moment to be a *legal* Petitioner, and forfeits all claim to a consideration of his Petition. Such are, for instance, the cases of an Elector who ceases to possess the right to vote, and of a Candidate who, by Bankruptcy or

(1) *Great Grimsby*, 1801.—Perry and Knapp, P. 422.
Southampton, 1833.—Perry & Knapp, P. 219.
Westminster,—1771 Chambers on Elections, P. 158.
Belfast, 1842.—Barron & Austin, P. 554. note.
Athlone, 1842.—Barron & Austin, P. 663.
Middlesex, 1804.—1 Peckwell, P. 294.

Bribery, becomes disqualified from sitting as a Member. Much additional light is thrown upon the question by a comparison of the Provincial and Imperial Statutes on the subject of Election Petitions, and by an examination of the current of ENGLISH DECISIONS.

Imperial Statute (2).
11 & 12 Victoria, chap. 108. § 2.
Vide Warren, Election Law, 329 A.

" That every Petition presented " to the House of Commons " within the time from time to " time limited by the House for " receiving election Petitions, and " complaining of an undue elec- " tion or return of a member " to serve in Parliament, or com- " plaining that no return has been " made according to the requisi- " tion of any Writ issued for the " election of a member to serve " in Parliament, or complaining " of the special matters contained " in any such return, and which " Petition shall be subscribed by " some person *who* VOTED or *had* " *a right to* VOTE at the election " to which the same relates, or " by some person *claiming* to " have had *a right to be* RE- " TURNED OR ELECTED thereat, or " *alleging himself to have been a* " CANDIDATE at the Election, " shall be deemed an Election " Petition. "

Provincial Statute.
14 & 15 Victoria, chap. 1, § 1

" That every Petition presented " to the Commons House of Le- " gislative Assembly of this Pro- " vince, within the time herein- " after for that purpose limited " with respect to such Petition " and complaining of an undue " election or return of a member " to serve in Parliament, or com- " plaining that no return has been " made according to the requisi- " tion of any Writ issued for the " election of a member to serve " in Parliament, or complaining " of the special matters contained " in any such return, and which " Petition shall be subscribed by " some person *who* VOTED or *had* " *a right to* VOTE at the election " to which the same relates, or " by some person *claiming* to " have had *a right to be* RE- " TURNED OR ELECTED thereat, or " *alleging himself to have been a* " CANDIDATE at the election, " shall be deemed an Election " Petition. "

Now the wording of the Imperial Statute being so closely, nay litterally, followed by the Provincial Statute under which the Lotbinière Election Committee sits, it is self-evident that the interpretation placed by British Select Committees and their Commentators upon the Imperial Statute, is a safe guide for, and must prevail with, Canadian Select Committees, in the interpretation to be given to our own Statute; were it other-

(2) A similar provision is to be found in all the preceding Imperial Statutes on the subject of Election Petitions.

wise, the necessary consequence would be, that, on that side of the Atlantic, the same words mean one thing, and on this, quite another thing. The following extracts from English writers on Election Law speak for themselves; the several works from which they have been selected will be found referred to in notes below.

Mr. Orme, in his valuable book (3), thus speaks of preliminary objections to the hearing of Election Petitions:

> " Where any fraud or irregularity has been practised as to
> " the presenting of a Petition, or where any objection is made
> " as to the RIGHT of the Petitioner *having* his *Petition* HEARD,
> " Committees will enquire into, and decide, the same BEFORE
> " they enter into evidence as to the *merits of the Petition.*

Mr. Roe (4) prefaces the enumeration of the various objections, which may be urged against an Election Petition, with these remarkable words:

> " Suffice it here to observe, that, in whatever character a
> " person may petition, he must be prepared, as a first step, to
> " prove himself entitled to it, and *without so doing he* CANNOT
> " *proceed.*"

Mr. Rogers (5) upon the same subject has the following:

> " It has been noticed above that a Petitioner is required to
> " state in his Petition the character in which he claims to ob-
> " ject to the return or election; this statement he is required to
> " prove. It is also open to the other party to DISPROVE this
> " *title of* the *Petitioner*, and DISQUALIFY *him from proceeding*
> " on his Petition".

Mr. Roe (6) thus alludes to the necessity of having a Petition from the Electors as well as one by the Candidate:

> " It is always prudent, in the case of a petition by a candi-
> " date, to have also a petition from electors, in case of any
> " technical difficulty arising as to the one which perhaps may
> " not apply to the other."

Mr. Roe (7), after an elaborate examination of the ob-

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(3) Orme, Election Law, P. 364.
(4) 2 Roe, Law of Elections, P. 103.
(5) Rogers, Law and Practice of Election Committees, P. 63.
(6) 2 Roe, Law of Elections, P. 101. Note *a*.
(7) 2 Roe, Law of Elections, P. 110, 111.

jections, apparent on the face of a Petition, which may be insisted on as preliminary points to defeat it, thus treats of other objections, which, though not apparent on its face, may also successfully be urged, as preliminary points, to have it rejected :

" There are objections, other than those which appear upon " the face of an election petition which may equally operate as " impediments to its being entertained ; and these may also be " put forward against petitioners as preliminary points.

" The objections alluded to are

" 1° That there have been undue practices in bringing for- " ward the petition ;

" 2° That a Petitioner has not, in reality, the character " which he assumes in subscribing the petition.

" 3° That a Petitioner has precluded himself by some act " of his own, from complaining of the matters of the petition.

" 4° That a Petitioner, *petitioning as* having been *a* CAN- " DIDATE, *is* INELIGIBLE *or* DISQUALIFIED or that he has not a " qualification to enable him to sit in parliament.

" 5° That a Petitioner, petitioning as an elector, is disqua- " lified to vote.

" It is to be observed that a *petitioner* in any case, by be- " coming such *renders his* WHOLE *conduct*, with regard to the " election, *amenable to enquiry*, in order to the discovery of " *objections, which* would DEFEAT *the petition*; and in the case " of a candidate with the further view also of showing him to " be incapacitated in the event of a re-election."

Mr. Rogers (8) expresses the same opinion:

" It seems clear, that, where a Petitioner claims the seat, " his whole conduct is put in issue ; and his opponent may " offer any evidence to shew that he has been *guilty of* BRIBE- " RY *or* TREATING in order *to* DISQUALIFY *him from obtaining* " *the seat*, or from standing at the election, supposing the elec- " tion to be declared void."

Mr. Roe (9) has the following conclusive remarks on this point:

" It seems to be an established principle, that NONE BUT " *those* who are *capable of sitting as Members* of the House of " Commons *can* EFFECTUALLY *become petitioners in election* " *petitions* in the character of *candidates*, inasmuch as it would

(8) Rogers, Law & Practice of Election Committees, P. 106.
(9) 2 Roe, Law of Elections, P. 122. 123.

" be nugatory and idle, that a person should contend for a de-
" cision in his favor, the advantage of which he could not reap
" in the general result."

The same author (10), a few pages further on, observes:

" Where the proper notice has been given, on the part of
" the sitting member, of an intention to *question* the *qualifica-*
" *tion of* the *petitioner*, the Select *Committee* will *postpone*
" their *enquiry* into the general *merits of* the *case*, UNTIL the
" question as to such *qualification* shall have been *disposed of;*
" and this upon the principle that it would be fruitless for a
" petitioner to struggle for a Seat whiuh he could not hold."

The same author (11) thus alludes to the right of petition by electors:

" The objection that a petitioner, petitioning as an elector,
" is disqualified to vote, is similar in principle to those apply-
" ing in the case of a candidate.
" The ground upon which an elector is permitted to petition,
" is, that he has a direct and positive interest in the return of
" the proper person ; and that a petitioner, in such case, must
" really and legally be an elector, has already been seen. If
" he be no elector, he has no sufficient interest whereupon to
" found a petition.
" For the same reason, a person who has a title to be an
" elector, but is incapacitated from voting by some personal
" disqualification, cannot legally become a petitioner, inasmuch
" as, not being able to exercise his franchise, it is for these pur-
" poses the same as if he had none.
" The case in which this point has arisen has been that of an
" alleged disqualification by bribery; but the same reason
" would hold in any other case of disqualification."

To conclude the series of extracts upon this point, the following comprehensive and logical remarks by that able election lawyer, Mr. Warren, (12) thus sum up the law on this subject:

" To obviate needless difficulties,—indeed to avoid suggest-
" ing them to an anxious opponent—it will be prudent to
" make, if possible, no persons parties to a petition in any of
" the prescribed capacities, who are liable to even the most
" captious exception.
" If VOTERS, it will be easy to ascertain that they *voted*
" RIGHTFULLY; or that they had, at the time of the election,

(10) 2 Roe, Law of Elections, P. 129, 130.
(11) 2 Roe, Law of Elections, P. 131.
(12) Warren, Election Committees, P. 311. 312. 313.

" a CLEAR RIGHT TO VOTE, as in either case liable to no
" imputation of defective qualification, or loss of it, or per-
" sonal incapacity. A person having a title as an elector, but
" incapacitated from voting by some personal disqualification,
" *cannot legally become a petitioner*, inasmuch as not being
" able to *exercise* his franchise, it is for these purposes the
" same as if he had none. * * * * * * * * * *
" Again care should be taken to ascertain that the petitioner
" had done no act at the election compromising his right
" subsequently to petition. * * * * * * * * * *
" * * * * * * * * * * * * * * * * *

" In the case of a CANDIDATE petitioning, it has been held
" an *objection* that he was INELIGIBLE, or DISQUALIFIED, and
" consequently *unable to take his seat in Parliament.* It
" seems to be a *reasonable* and *recognized principle* that none
" but those capable of sitting as Members of the House of
" Commons can effectually become petitioners in the charac-
" ter of Candidates; inasmuch as it would be nugatory and
" idle that a person should contend for a decision in his favor,
" the advantages of which he could not reap in the general
" result. An objection on this ground may hold good in
" respect either of some particular place, or generally of all
" places, and be insisted upon accordingly. If these principles
" of the common law of Parliament, be held still applicable
" to the right of petitioning defined by the Election Petitions
" Act, 1848, § 2, the "*claim* to have had a right to be
" returned or elected," must be read "*valid* claim,"; and
" to the words "*alleging* himself to have been a Candidate,"
" must be added "then capable of sitting in the House of
" Parliament."

The following cases decided by British Select Committees also confirm the view adopted by the Lotbinière Election Committee on this point.

1 *North-Cheshire*, 1848........................(13).
2 *Coventry*, 1827..............................(14).

The Petitioners alleged themselves to be voters. It was held by the Committee "that the Petitioners must prove their right "to vote before proceeding further."

3 *New-Castle-under-Lyme*, 1803..................(15).
4 *Dungarvon*, 1808..............................(16).

(13) Power, Rodwell & Dew, P. 217.
(14) Rogers, Law & Practice of Election Committees P. 65.
(15) 1 Peckwell, P. 490.
(16) 2 Roe, Law of Elections, P. 105.

5 *Waterford*, 1803.....(17).

In each of those cases the Petition, which claimed the seat for the unsuccessful candidate, was rejected by the Committee, on the ground of there being no proof that he was a candidate.

6 *Berwick-on-Tweed*, 1820.....(18).

The sitting members were allowed to prove that the Petitioners, who claimed a right to vote, were not in fact electors, and were thus disqualified from petitioning.

7 *Herefordshire*, 1803.....(19).

This was a petition purporting to be from eight electors against the return of one of the sitting members. To Morse, one of them, it was objected, that he was not an elector, and to the other seven, that they had voted for the sitting member. Upon proof of those objections, the Committee ordered Morse's name to be struck out of the petition. and refused to hear the other petitioners against the sitting member.

8 *Canterbury*, 1796.....(20).

The Petitioners were met, in the opening of their case, with an objection from the sitting members that fraud had been practised in the presenting of the petition. The Committee resolved—"That the fraud alleged had been proved against the petitioners." And—"that the said petition should not be heard."

9 *Stamford*, 1677.....(21).
10 *Bedford* 1728.....(22).

The Petitioners, who were the unsuccessful candidates, held disqualifying offices, and were in consequence not allowed to proceed with their petitions.

11 *Penryn*, 1827.....(23).

The Petitioner, a dissenter, had refused to take the qualification oath as a candidate. Upon that ground, on objection being taken by the Sitting Member to that effect, the Petition was rejected by the Committee.

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(17) 1 Peckwell, P. 217.
(18) Rogers, Law & Practice of Election Committees P. 8 note.
(19) 1 Peckwell, P. 210 & 211.
(20) Clifford, P. 361.
(21) 9 Journals, P. 407.
(22) 21 Journals, P. 138.
(23) Rogers, Law & Practice of Election Committees, P. 8 note.

12 *Sandwich*, 1808.....(24).
13 *Great Grimsby*, 1873.....(25).

The unsuccessful candidates petitioned as such against the return of the sitting members, who objected to the Petitions being heard, on the ground that the Petitioners did not possess the requisite property qualification to enable them to sit in parliament. The objection was fully substantiated in evidence, and the Petitions were rejected by the Committees.

14 *Cærmarthenshire*, 1803.
15 *East Grinstead*, 1803. .....(26).

The petitioners were the unsuccessful candidates, and the sitting members were allowed by the Committees to go into evidence, as a preliminary point, of the ineligibility of the Petitioners.

16 *Wootton Bassett*, 1690.....(27).
17 *Honiton*, 1782.....(28).

The unsuccessful candidates petitioned. The sitting members took a preliminary objection to the hearing of the Petitions, on the ground that the Petitioners, by their agents, had been guilty of bribery. Upon proof of that objection, the Committees refused to allow the Petitioners to prove the allegations of their Petitions.

Those considerations and authorities prevailed with the Lotbinière Election Committee, and the Sitting Member was allowed to adduce evidence of bribery and other corrupt practices by the Petitioner and his authorized agents at the late election for Lotbinière. That evidence has been gone into by the Sitting Member, and it only remains for him to shew that the facts proved by him are such as to disqualify the Petitioner from taking or retaining the seat claimed in the Petition, and (as a necessary consequence of that disqualification) from proceeding further on his petition. The task in question will be no difficult one. Before however adverting to the facts now in evidence before the Committee, it is fitting to examine the nature and parliamentary consequences of corruption at elections.

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(24) 2 Roe, Law of Elections, P. 128 to 130, note.
(25) Perry & Knapp, P. 169, note.
(26) 1 Peckewell, P. 290 & 335.
(27) 1 Luders, P. 66.
(28) 3 Luders, P. 163.

It is erroneous in principle to suppose that, for a determination of the nature and parliamentary consequences of corrupt practices at elections, we are to look to the Satute Law alone; for the severity, with which they have been visited in their guilty author, takes its rise in one of the fundamental principles of the Common Law of Parliament. In alluding to this principle, Sir John Simeon, quoted by Mr. Male (29) at the conclusion of his chapter on bribery, thus eloquently exclaims:

> "These are the principal causes of avoiding an election, all of which are but corrollaries flowing from one great principle, *that elections sould be free.*" Upon the preservation of this principle not only the prosperity, but the very existence of the State, as a free state, depends. The violation of this, even in the earliest days of Representation, called forth the spirited, though feeble, voice of the people, who stamped upon record this maxim: "That Elections should be Free." To this principle and the due exertion of that spirit which it produces, we owe the signal triumph of having seen, in the reign of H. 6, the infamous proceedings of a parliament garbled by the crown without the suffrages of the people, swept away by the first breath of the succeeding parliament, and the Freedom of Election restored, and strengthened, by the most open and unequivocal declaration of the Legislature. To this principle we owe a successful opposition to the proclamations of James the First, who would have overawed the free voice of the people by restraining edicts, founded in the very spirit of despotism. To a laudable anxiety for preserving the Freedom of Elections, we owe the continuation of those chartered liberties, which the sacrilegious hand of Charles the Second would have ravished from us. The firm and well directed spirit of the Revolution, steering between the extremes of republican licentiousness and servile obedience, again recorded the principle, as one of the conditions of loyalty, and has fixed this natural and chartered right upon an imperishable foundation."

In the Constitution of Canada, which is engrafted upon that of the parent State, the same maxim, without which the elective principle becomes a mockery, a delusion and a snare, is inherent also; while in Canada, as great, if not a greater, necessity exists for jealously guarding and preserving inviolate this sacred right. In the necessity of maintaining the purity of elections is to be

(29) Male, Law of Elections, P. 359.

found the reason of the disqualification which the use of corrupt practices entails, by virtue of the Common Law, on the guilty Candidate. Therefore is it, that English writers, on Election Law, (30), are unanimous in the opinion that bribery and treating at elections always were offences at Common Law, and disqualified the person guilty of those offences from sitting in Parliament; and many cases are cited by them of members unseated for bribery and treating before any Statute had been passed upon the subject. They are moreover of opinion, that the Statutes passed on the subject of bribery and treating are not restrictive, but only confirmatory, of the Common Law of Parliament with respect to those offences; and that Committees are not tied down, in the detection and punishment of offenders against the purity of elections, to the narrow, and oft-times hastily framed and ill digested provisions of the Statute-book. The length to which quotations have already swelled this Factum, compels the Sitting Member to confine himself upon the latter point to the following from Rogers and Warren. Mr. Rogers (31) says of the disqualification of Candidates through corrupt practices:

> "This disqualification originally stood upon the ground of the Common Law; and the Statutes that have been passed were intended only to give fuller effect to the Common Law of Parliament, and an inherent principle in the Constitution.

The same author (32) observes;

> "Neither the Treating Act, nor the statutes against bribery, were intended to cripple the powers of the common law; for admitting that *corrupt* treating is bribery, and therefore, an offence before the statute, it is impossible to argue that because the statute declares *all* treating, however moderate, after the Writ, to be illegal, it impliedly sanctions any treating before the writ, however extravagant and corrupt; besides that, act, like the bribery acts, is declaratory as well as enacting. * * * * * *
> In *Rex vs. Pitt*, 3 Burr. 1335, 1 W. B. 382, it was held that the

(30) 1 Blackstone, Commentaries, P. 179.
Male, Law of Elections, P. 345.
Wordsworth, Law of Elections, P. 120. 149.
Rogers, Law & Practice of Elections, P. 242. 261. 265.
Warren, Election Law, P. 248. 262.
Warren, Election Committees, P. 423.

(31) Rogers, Law and Practice of Elections, P 74, 75, 76.

(32) Rogers, Law and Practice of Elections, P. 263, Note *a*.

2 Geo: 2, ch: 24, did not alter the offence of bribery at common law. It is a maxim of the common law also, that a statute made in the affirmative, without any negative expressed or implied, does not take away the common law, 2 *Inst.* 200; nor work any change in what was before otherwise than by addition and confirmation, and does not derogate from the common law.—*Vin, abrid. statute,* E. 6.

Mr. Warren (33) thus speaks of the Treating act, 7 William 3, ch: 4 (A. D. 1695.)

" That *declaratory* act undoubtedly recites as a prominent object of passing it, the securing elections to be " freely and indifferently made, *without charge or expense;*" " but its provisions " embrace, in the clearest possible language, both *treating* and " *bribery*, each of which it prohibits: the former, under the words " *meat, drink, entertainment, provision,*"—the latter under the " words " MONEY, PRESENT, GIFT, REWARD;"—as to which it " DECLARES and enacts:" that " *no person*"—(NOT SPECIFYING " IN TERMS ANY DISTINCTION BETWEEN BRIBERY BY THE MEMBER HIMSELF OR BY HIS AGENT)—" *after the* teste *of the writ,* " *&c., shall by himself, or by any other ways or means on his behalf, or at his or their charge, before his election,.....directly or indirectly, give or present.....to any person* " *having voice or vote in such election, any* money,.....*or make* " *any* present, gift, reward,.....*or make any promise, agreement, obligation or engagement.....to give.....any* money,.....present, reward.....*to or for any such person in* " *particular, or to any such county.....or place.....in general, or to or for the use, advantage, benefit employment, profit,* " *or preferment of any such person.....or place.....*in order " to be elected, *or* for being elected, *to serve in parliament for* " *such county.....or place; and that every person so giving,* " *presenting.....making, promising, engaging, doing, acting,* " *or proceeding.....shall be and is hereby* DECLARED *and* " *enacted, disabled and incapacitated, upon such election, to serve* " *in parliament for such County.....or place.....and deemed or taken, and is thereby* DECLARED *and enacted to be deemed* " *and taken no member in Parliament; and shall not act, sit, or* " *have any vote or place in Parliament, but shall be and is there-* " *by* DECLARED *and enacted to be, to all intents, constructions, and* " *purposes, as if he had been never returned or elected member* " *for the parliament.*"—"It is to be observed," continues Mr. " Warren, " as will presently be shewn at length, that this act is " thus one professedly declaratory of " what," in the language of " Blackstone, " THE COMMON LAW IS, and ever hath been:" therefore conclusively showing, had it been wanting, that, directly or " indirectly, to give money, present, or reward, in order to be " elected or for being elected, to serve in Parliament, *was then a*

(33) Warren, Election Committees, P. 426. 427.

" *Common Law offence ;* and that whoever did so was, by Com-
" mon Law, disabled and incapacitated to serve for that place, and
" was, in point of Law, no member, nor ever had been, by virtue
" of an election and return so obtained. The act also, in like
" manner, deals with the giving, presenting, allowing or promis-
" ing " meat, drink, provision or entertainment; " and in con-
" struing the act, in the case of *Hughes vs. Marshall and others*,
" Lord Lyndhurst stated expressly, that, " if the refreshments
" were provided for the purpose of procuring an election, that
" constituted the offence of bribery at Common Law. "

" The Treating Act " may therefore be regarded as a correct exposition of the Common Law ; and it leaves uncondemned many practices fully as dangerous and corrupt as those which it proscribes ; for instance,

1 ° The mere and unaccepted offer of a bribe is not declared to be an offence at Common Law. (34).

2 ° The taking of the bribe is not condemned by the Common Law. (35).

3 ° Theoffence is not complete at Common Law, if the party bribed do not perform the act which he was bribed to do. (36).

4 ° That Treating, which is not given for the express purpose of procuring the election, is not bribery at Common Law. (37).

5 ° The parties bribed or treated must be electors in order to constitute the offence at Common Law. (38).

Those omissions were in part remedied by the Imperial Statutes, 2 Geo ; 2, ch: 24, and 49 Geo: 3, ch: 118; Those Statutes, however, still left unprovided for, the first of the above five cases, viz: The mere offer of a bribe.

That omission is still felt in the legislation of Great Britain and it remained for our own Legislature, by the 12 Victoria, ch : 27, § 54, to fill up that vacancy, and destroy the last retreat, within which corruption might conceal itself; but the Statute just alluded to goes immeasu-

rably beyond the Common Law and the English Statutes on the subject. The wisdom and foresight which presided at its enactment render it worthy of being here transcribed and commented on.

12 Victoria, ch: 27, § 54.

" *And be it enacted, That it shall not be lawful for any* " *Candidate at any election*, DIRECTLY *or* INDIRECTLY to " employ ANY means of corruption, *by giving any sum* " *of money, office, place, employment*, gratuity, reward, *or* " *any bond*, BILL OR NOTE, OR ANY PROMISE OF THE SAME, " *or to threaten any Elector of losing any office, salary, in-* " *come or advantage*, either by himself or his authorized " agent for that purpose, with the intent to corrupt or " bribe any elector *to vote for such Candidate, or to keep* " *back any Elector from voting for any other Candidate*, " nor to OPEN and SUPPORT, or CAUSE to be opened and " supported, at his costs and charges, any house of pub- " lic ENTERTAINMENT *for the accommodation of the Elec-* " *tors, and in case* any representative RETURNED to parlia- " ment *shall be proved guilty of using any of the above* " *means to procure his Election before the proper Tribunal,* " *his Election shall thereby be declared void, and he be in-* " *capable of being a Candidate, or being* elected *or* return- " ed during that Parliament."

There are, in that Statute some words which deserve peculiar notice, as forming what may be called the hinging point of the present contestation.

1 ° The *giving*, nay the MERE *promising* of a *gratuity* or *reward* of any kind, even a *bill* or *note* however small in amount. or worthless, *with the intent to corrupt*, or to *induce* a voter *to* VOTE for a particular Candidate *or* ABSTAIN *from voting* for the other Candidate is declared to be bribery; whence it follows that, by our Statute, the *mere* offer of a bribe is bribery; and that such bribery or such offer must be accompanied with an intent, in the briber, to procure, or cause to be withheld a vote or votes.

2 ° The *opening* of a house of public entertainment for the electors, *at the costs and charges* of the Candidate

is bribery ; whence, and from the absence, in that phrase, of the words "with the intent &c., &c.," we must conclude that, to constitute the latter offence, no corrupt intent is necessary.

3 ° The ONLY *person* declared to be *disqualified* for the acts of bribery mentioned in the text, is the *Representative* RETURNED *to Parliament*; and *he* is disqualified *during that Parliament*, not a word being said about his disqualification for ANY *particular* place; whence it follows, that our Statute does not embrace any acts of bribery committed by the unsuccessful Candidate, the Petitioner, who was not, but says he ought to have been, returned, and does not work any disqualification in the latter, because it speaks of the former only; and that the disqualification entailed on the former by that Statute, is, owing to the absence of the words "for that place," general in respect of all places, and prevents the former from sitting for that, *or any other*, place during that Parliament.

It is simply absurd to contend that we are to look to our own Statute only for the nature and parliamentary consequences of bribery and treating; such a doctrine is a direct impeachment of the judgment of the Lotbinière Election Committee, in so far as that Committee allowed the Sitting Member to adduce evidence of the disqualification of the Petitioner by bribery and corrupt practices, a thing which that body would have erred in doing, if the 12 Victoria, ch. 27, § 54, were to be alone considered in the determination of the causes which disqualify; for that statute has not a single word about the bribery of an unsuccessful Candidate. For that Committee to admit such a doctrine would be to stultify itself, and place itself in contradiction with its former decision. Again, the consequence, the inevitable result, of receiving such a doctrine would be a flagrant act of injustice to the Sitting Member in every Election case ; for it would be saying that the bribery of an unsuccessful Candidate, Petitioner, however gross, how unblushing soever, cannot be enquired into, inasmuch as, not having been *returned*, he cannot be dis-

qualified; and after he shall have been returned or seated by the Select Committee, it is too late to petition against him or enquire into his acts (39); and the guilty Candidate will be allowed to reap unmolested the fruit of his corruption, while the unseated one, with a majority of unbribed votes, will remain the victim of a wrong without a remedy. Moreover the authorities cited at pages 13 & 14 of this Factum conclusively establish, that the absence of negative words in a Statute has for effect to leave the Common Law untouched, and as it stood before; now the 12 Victoria, ch. 27, § 54 contains NO *negative* words by which other acts, or the same acts under other circumstances, than those mentioned in the text, are declared NOT *to be corrupt*, and NOT to work a disqualification of a Candidate, petitioner; so that by those authorities we are bound to believe that our Statute does not take away from the Common Law, but only serves to confirm it.

But admitting, for the sake of argument, that "Re- "presentative returned to Parliament" means "Can- "didate, petitioner, *not* returned to Parliament," and that we are in consequence to be guided by our Statute alone in the appreciation of the corrupt practices which disqualify a person from sitting in Parliament, the Sitting Member nevertheless feels confident, that there is, before this Committee, evidence of acts which clearly fall within the prohibitory terms of our own Statute. Fortunately, from the manner in which some of the witnesses (supporters of the Petitioner of course) gave their evidence before the Honorable Cimmissioner, and from other circumstances, the Sitting Member was enabled to glean some knowledge of the *two* points on which the Petitioner will rely to screen himself from the consequences of the acts of his agents at the late election for Lotbinière.

Those propositions seem to be

1 ° That there must be evidence of the Petitioner

(39) 14 & 15 Victoria, ch. 1, § 2, 7, 8.

having furnished his agents with money, and positively enjoined them to expend it in bribing; or

2° That there must be evidence of the expense of the treating having been paid with the Petitioner's own money.

The Petitioner appears to found his pretension in that particular upon the words of our Statute "at the election * * * * * either by himself or by his authorized agents *for that purpose*," and upon the words "at *his* costs and charges." Now the Sitting Member thinks he has already shewn that our Statute is not alone to be looked to in this matter; but, even if it were to be regarded as the only law upon the subject, and if the words "authorized for that purpose" are to be considered as meaning that the agent must have been authorized expressly to bribe, it is very evident, from the absence, in the Statute, of any allusion to the unsuccessful Candidate, that it is not necessary to prove that HE gave his agent an express order to bribe, in order to disqualify *him*, and that it is the Sitting Member, and not the Petitioner, who must be proved to have laid on his agent an express injunction to bribe. But common sense and the law itself as expounded by the constant stream of decisions, shew that the words "authorized *for that purpose* cannot by any possibility be construed as conveying a meaning so absurd. What says Rogers (40) on this point?

> "But when bribery is in contemplation, the accredited agent of
> "the Candidate is studiously kept in ignorance of what is go-
> "ing on, his employment is strictly limited to what is legal. It
> "would be as reasonable to expect that a candidate had given to
> "an agent instructions to bribe, as to discover that the persons
> "engaged in giving money to voters were his confidential agents.
> "It seems that the true rule is to hold a candidate responsible
> "for the acts of those whose services he pays for or adopts,
> "without reference to the degree of confidence he may be sup-
> "posed to have placed in them.

Authorities in the same sense might be multiplied to any extent, did the limits of this Factum permit it; a

(40) Rogers, Law & Practice of Election. P. 258 & 259.

few of them will however be found cited in a subsequent part of this Factum, where they are used to prove some propositions of the Sitting Member. Indeed the Sitting Member, through fear of offering an insult to the judgment of the Members of the Committee, at first thought of citing no authorities on that point of his case, so plainly did it seem to him that those words merely meant an agent "authorised for the purposes," not of bribery particularly, but "of the election" generally which is spoken of in the first part of the same section. Those words were inserted evidently with the view of protecting the successful Candidate from the consequences of any illegal act which might be committed by a total stranger to him or even by a person who might be his agent for *other* purposes than those of the election. For instance a *seigneur* having in a county agents *authorized* FOR THE PURPOSE *of collecting* his *dues* would not be prejudiced by the acts of those agents, unless it were also shown that he had also *authorized* those agents FOR THE PURPOSES *of the election.* True, those men are *his* agents; but as regards the election, the Candidate, not having authorized them *for* THAT *purpose*, he is not affected by their acts. Moreover the laws of agency *in private life* are such that the principal, having held a man out to the world as his agent, is liable for such acts as naturally fall within the extent of that authority; and is, in some instances, responsible for acts exceeding the agent's authority. For instance, the servant, who, while driving his master's horse, causes, through negligence, damage to a third person, renders his master liable for the amount of that damage. If a master sometimes sends his servant to buy goods for him, on his, the master's, credit, or to receive money for him, and if the servant do afterwards, without being sent, receive other goods on the master's credit or other money due the master, and do not deliver the goods, or account for the money, to the master, the latter is nevertheless responsible for the goods, or loses the money, as the case may be. The reason of the liability in such cases, is, that the man, who employs an agent, is presumed to have given him an authority

necessarily commensurate with the object in view, and to have authorized him to use all the means necessary to effect that object; now, in the case of an election, bribery one of the means by which an election may be brought about; and it is not too much to expect that, in public life, where the public has the greater interest, the principal's liability should extend much beyond the principal's liability in private life.

As to the pretension that the Petitioner must be proved to have paid, from his own purse, the expense of keeping an open house, it is refuted by every decision which has been rendered by British Select Committees on the question of treating, although the Imperial Statutes of the 7 William 3, ch, 4, of the 49 George 3, ch. 118, and of the 5 & 6 Victoria, ch. 102, all contain the same form of words "at his costs and charges," as is to be found in our own Statute. Indeed the matter is so plain that, in no one case of treating, was a doubt of the Candidate's liability in such cases raised by counsel before Election Committees in England. In every case, (and many of them are cited in a subsequent part of this Factum) where it was proved that treating had been carried on by agents of the Candidate, that Candidate, whether he were the Sitting Member or the Petitioner, was declared by the Select Committee to be disqualified, though the treating was not proved to have been "at the costs and charges" of the Candidate, and though the Statutes on treating all contain the words "at his costs and charges," so much relied on by the Petitioner in this case. The reason of the decisions in such cases seems to be, that the Law presumes the treating to have been "at the cost and charges" of the Candidate, whenever it took place by the orders of his agent, he being liable for the expenses incurred by his agents on his account; for it is clearly "at the costs and charges" of the Candidate, when, if he were sued for the value of entertainment given to his voters by order of his agent, he would, were it not for the illegality of the contract, be condemned to pay. In the

case of *Ridler vs. Moore & Francis* (41), the Plaintiff, a publican, recovered from the Defendants, two of the Candidates, for refreshments provided by him for the Defendants, voters, at the election, on the order of a man, named Smith, who was merely shewn to have a member of the Defendants, Committee of management. Moreover the Law declares that the validity of the original consideration of a Promissory Note, shall not be questioned in the hands of a *bonâ-fide* holder for valuable consideration to whom the not shall have been endorsed before it shall have become due: now if a Candidate or his agent give such a note, will any man in his senses pretend because that note may or may not be endorsed before it becomes due, and because the Candidate's liability to pay shallbe determined by the contingency of endorsement, that the Candidate's parliamentary guilt or innocence, his capacity or incapacity to sit or petition, shall depend on such a contingency as a stroke of the publican's pen, or even the Candidate's willingness or unwillingness to pay: such a doctrine, if true, must be so in all its consequences; but let us follow them a little further, and see where they will lead us to: let us suppose that a judgment goes against the Candidate for a less sum than is required to execute on real property, and that the Candidate has no personal estate; will it be supposed, because the amount of the judgment cannot be recovered, and because the Candidate cannot in consequence be made to pay, that the treating was not "at his costs and charges." But the fallacy of the Petitioner's pretensions will be best demonstrated by the reasoning of the Election Law writers, whose opinions on this head are set forth in the subjoined extracts.

Mr. Warren (42) thus states the parliamentary consequences, to the Candidate, of bribery, even by agents, without the knowledge of their principal:

> "The parliamentary consequences of bribery are determined
> "by the Select Committee appointed to enquire into each
> "particular duly-challenged election. They obliterate the

(41) Warren, Election Committees, P. 571.
(42) Warren, Elections Committees, P. 495.

" faulty vote from the poll; *declare the election of* HIM *who* " either personally, or *by his agents* UNKNOWN *to him, has* " *bribed a* SINGLE *voter,* void; and *will* SEAT *his opponent,* if " he prove himself entitled to the seat."

Mr. Clerk (43) coincides in opinion with Mr. Warren, and ably draws the distinction between the penal and the parliamentary consequences of bribery:

" Any illegal and corrupt act, such as those which have been " here described as amounting to bribery, committed by the " Candidate himself, will of course *disqualify him from taking* " *or keeping the* SEAT; *so also if committed by any* person " acting in the capacity of his *agent* at the election. Who are " to be deemed agents will be considered in another chapter."

" It must be remembered that a candidate is responsible in " an investigation as to the validity of an election for the illegal " acts of his agent, though they are done *without his knowledge* " *or consent.* The Statute 49 George 3, ch. 118, § 3, speaks of " the Candidate *knowing of, or consenting* to gifts, &c., not- " withstanding these words it has been established by the cur- " rent of decisions, that *whether the Candidate knows of, or* " *consented to,* the bribery *or not, he is* EQUALLY *disqualified.* " See *New-Castle-under-Lynme,* Bar. & Aust. 446; *2nd Ipswich,* " Bar. & Aust. 601; *Southampton,* Bar. & Aust. 401; *Notting-* " *ham,* Bar. & Arn. 156; *Cambridge,* Bar. & Arn. 190; " *Durham,* Bar. & Arn. 224; and see language of *Abbott,* C. " J., in *Felton & Easthope,* cited in *Rogers on Elections,* 259. " No person is liable to be sued for a penalty unless that, which " was improperly done, was done by his authority. But if an " agent bribes voters, *with or without* the knowledge and direc- " tion of the principal, it will void the election: *the principal is* " *to that extent* liable, but not so in an action of this sort."

The same author (44) thus speaks of that treating which does not amount to bribery, but nevertheless disqualifies:

" TREATING, in its effects upon the validity, and *in its con-* " *sequences to those implicated therein, so far as the* SEAT " *is concerned, is as dangerous an instrument as* BRIBERY. * * " * * * * * * * * * * *

" From the *Thetford case* in 1699, down to the present time, " with the exception of the *2nd Norwich,* 3 Luders, 449, *the* " *practice has been uniform,* VIZ: to hold that *treating incapa-* " *citates* AS MUCH *as bribery.* * * * * * * * * " * * * * * * * Though bribery and treating are " means to the same end, they seem to differ both in operation " and effect. Parliamentary bribery assumes, that a corrupt

(43) Clerk, Election Committees, P. 115, 116.
(44) Clerk, Election Committees, P. 117 & note, & 118.

" contract, either express or implied exists between the voter and
" and the Candidate for the actual purchase of a vote. In
" treating, no contract or even promise is supposed to exist: the
" voter is considered still to retain his power over his vote, but
" to exercise it under unworthy and debasing influence. BRIBE-
" RY is directed *to obtain the adverse, or fix the doubtful votes.*
" TREATING is resorted to, *to confirm* the *good intentions, and keep*
" *up* the party *zeal of those* believed to be already *in the interest*
" *of the candidate.*"

The same author (45) thus defines the treating which will affect the candidate.

" 1° Any treating by the candidate himself, at any time before,
" during, or after, the election, will incapacitate him from sitting.
" 2° Any treating on behalf of the Candidate, BY HIS AGENTS,
" subsequent to the issuing of the writ, *will also incapacitate*
" *him.*

" 3° Any treating by agents at the expense of the candidate,
" at any time before, during, or after, the election, will also in-
" capacitate him."

The same author (46) thus speaks of the Candidate's liability for the *unauthorized*, and even the *prohibited* acts of the agent:

" If an agent in the affairs of private life were to act in contra-
" vention of the instructions given to him, the principal would not
" be responsible; but *in the case of an election*, the agent, into
" whose hands the candidate has committed the conduct of the
" election, may make his *principal responsible for illegal acts*
" which have been EXPRESSLY *prohibited by him.* In Mercan-
" tile transactions, in order to render the principal responsible for
" the acts of the agents, the agent must be acting within the
" scope of his authority, either as defined by the instructions
" which he has received, or by the general custom of the trade:
" but it would be USELESS in an election inquiry *to look for any*
" SPECIAL INSTRUCTIONS *to bribe*, and it would be impossible to
" contend that there is any general custom which defines the ac-
" tions of an electioneering agent."

In the following cases, the Candidates, who had the majority of votes, were proved to have been guilty, by their agents, of bribery and treating, *at the election immediately* PRECEDING and complained of, and the Can-

(45) Clerk, Election Committees, P 127.
(46) Clerk, Election Committees, P. 144. 145.

didates, who had the minority of votes, but were duly qualified, were seated by the Committees viz:

1° *Bewdley*, 1675, cited 1 Luders, P. 65.

2° *Mitchell*, 1690, " 9 Journals, P. 66.

3° 2*nd Horsham*, 1848, reported, P. R. & D.. P. 238

The cases of *Middlesex* and *Herefordshire* were in this spirit decided that *even* BARE *refreshment* is TREATING and avoids the election (47).

It will be seen, on reference to Male (48), that bribery brought home to the Candidate, *or his* AGENT, *though in* ONE *instance* ONLY, disqualifies the Candidate, though a majority of unbribed votes remain in his favor.

Mr. Rogers (49) lays down the principles universally recognized by Election Committees, when he says:

" The principles of agency derived from the transactions of
" private life cannot be applied with strictness to cases of elec-
" tioneering agency. A candidate at an election professedly
" seeks an office of trust for the benefit of the public; the public
" therefore is the party mainly interested; nor is it too much to
" require that, in seeking to obtain such an office, the candidate
" should employ trustworthy agents. Even in the discharge of
" private trusts, a man is generally made responsible for the ho-
" nesty of the persons whom he employs, and is liable for any
" defalcation of which they may be guilty. In elections, where
" the protection of the public interest is the object to be attained,
" a candidate has no right to complain if he is made to suffer
" from the misconduct of others selected or allowed by him to
" act for him.

Mr. Rogers then proceeds to cite a number of cases, the decisions in which show, the author continues,

" That the seat may be lost for bribery by agents though
" without the knowledge of the Candidate."

Mr. Clerk has the following summary of the decisions, in the cases of *Middlesex* (50), and of the 2*nd Cheltenham* (51), which strike at the very root of the Petitioner's pretensions.

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(47) Montague & Neale, Parliamentary Elections, P. 53.
(48) Male, Law of Elections, P. 345. 346.
(49) Rogers, Election Committees, P. 221, note & 222, note.
(50) Clerk, Election Committees, P. 129,.
(51) Clerk, Election Committees, P. 133.

The principles of agency and the reasons of the liability of Candidates for the illegal conduct of their agents are thus admirably laid down by that most recent and logical Election-Law writer, Mr. Warren (52),

" The reason why such special prominence is given to AGENCY, " in all Treatises, Reports, and the proceedings before Select " Committees which those Reports record, and those Treatises " methodize, is, that it is in almost every case *through* the me- " dium of *agency that* the *parliamentary consequences of* BRIBERY " and TREATING *are* sought to be *attached to a Candidate* at an " election. He is rarely so imprudent as *personally* to interfere " in such discreditable transactions ; or if he do, to allow proof " of such interference to exist. It is practically impossible for " him to conduct his election himself, individually and exclu- " sively ; and he must therefore have assistance. If, for that pur- " pose, he appoint a hundred agents, he simply multiplies him- " self a hundred times, in order that he may be present in a " hundred different places at once. He must, however, take " good care whom he thus constitutes an *alter ego*; or he may " litterally ruin *himself*, as far as regards his parliamentary inte- " rests. Lord Eldon once said in one of his luminous judg- " ments in partnership cases (which are resolvable into AGENCY), " that " *Where a man took a partner. he took him for better and* " *for worse, as in marriage and he must abide by it. He commits* " *his best and dearest interests to the tender mercies of a stranger.*" " It is thus, indeed, with the parliamentary principal and his " agents. In their persons he may have a sort of ubiquity ; but " it behoves him to be ubiquitously prudent. *A* SINGLE UNAU- " THORIZED *act by himself, to himself* EVEN UNKNOWN, by one " of those representatives of himself, and the whole fabric of his " proud aspirations is suddenly melted into thin air, and all his " sacrifices, exertions, and anxieties have ensured him only bitter " disappointment, mortification and humiliating disabilities for " the future. He who derives the advantage, says the law, " ought to sustain the burthen ; and the benefits of agency are, " on grounds of public policy already explained, linked with lia- " bility, in the case of a *parliamentary* principal, far beyond that " imposed on an ordinary principal and agent." * * * * " There is no difference between an implied and an express " Agency, except as to the mode of substantiating it. An ex- " press agency is proved by an actual agreement (or appoint- " ment) ; an implied Agency, by circumstances : as, by the ge- " neral course of dealing between the parties. But whenever " an Agency has once been proved, *the consequences resulting* " *from it must be the same*, whether the Agency had been prov- " ed by direct or circumstantial evidence."

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(52) Warren, Election Committees, P. 560, 561, 562.

" The relation of principal and agent once established, it may " be said, that before a competent tribunal, the rest follows; as " though its eye saw the source of a stream, and traced the " waters flowing through a thousand channels, smaller and great- " er, nearer and more remote. Thus it is with the current of " blended representation and responsibility, issuing from the " principal, and flowing through his immediate, down to his most " distant, sub-agent." * * * * * * * * * * * *

" The essence of agency is REPRESENTATION: that is, one " man's being put in the place of another, by that other."

" It is not however, to be understood," continues the same author (53), " that all the rules of agency, as administered by " the ordinary courts of justice, are to be received in their naked " stringency by the Select Committee. It has been already " more than once intimated, that considerations of public policy " intervene to dictate essential modifications. It does this, be- " cause the office of a representative of the Commons in Parlia- " ment, is one of great PUBLIC TRUST, attaching to those who " seek it, grave responsibilities TO THE PUBLIC. It would be im- " possible to effect this object, if a Select Committee were com- " pelled to act on the common law principle, that an agent's " WILFUL and wanton tort attached no liability to his principal.

" A parliamentary tribunal, in short, looks at the relation of " electioneering principal and agent, thus.—The former confers " on the latter an authority necessarily commensurate with the " object in view. " *Get me returned*," says he to A., "*for such a* " *place*:" and thereby delegates to him a power of employing all " the necessary means for doing so. If, therefore, A. employ B. " —and B., C.,—and C., D.,—and so on down to Y., who employs " Z.; If Z. bribe a single voter, the principal is unseated: for " the act is regarded as one of those whieh lay within the scope " of that unlimited discretionary power which had been given to " A.

" A Select Committee knows well, moreover, that, as be- " tween the principal and his immediate agent A., the latter " is obviously the man to be kept most in ignorance,—a most " studied yet often most unsafe ignorance—of any illegal means " which may be used to gain the election. That Committee " is therefore, little concerned to ascertain what were the " precise terms in which the Candidate employed (54) which " may have been nominally, or in truth, of the most innocent " and honorable description; but it gives the Candidate notice " distinctly, that, if bribery should happen to occur by means of " one really clothed with the character of agent, however diffi- " cult it may be to establish that character, on its being " established, the act has vitiated the election. If this rule

(53) Warren, Election Committees, P. 568, 569.
(54) Warren, Election Committees, P. 578.

" were to be otherwise, it might be better at once to legalize
" bribery, because impossible to be detected."
* * * * * * * * * * * * * * * * * *

" When once," continues the same author (55), "the requisite
" species of agency has been established by legitimate evidence,
" most serious consequences may follow; for the principal, as
" we have seen, is at once affected by the acts and *declarations*
" of those who have thus been proved his agents, and to have
" done those acts, and made those declarations, while acting
" within the scope of the authority intrusted to them. Though
" the authority of such an agent be proved to have extended
" *to legal acts* ONLY, the employer will be held responsible for
" illegal acts of *sub-agents*, acting under the orders of his im-
" mediate agent."

In the Imperial Parliament in 1848, an unusually great number of Candidates were declared, by Select Committees of that Body, to be disqualified for treating *by agents* only, *without the Candidates' knowledge.* The cases are to be found reported in *Power, Rodwell, and Dew's* Reports; to two of them, the 1st *Lancaster*, reported at page 41 of that work, and the 2nd *Cheltenham* reported at page 224 of the same work, the Sitting Member prays the deliberate attention of the Lotbinière Select Committee; in the first of those cases, the principal witness who proved the treating, distinctly swore that " *the payments which he made came from his own pocket,*" and that " *he acted during the election*, NOT AS AN AGENT, *but to keep the interest of his Candidate on a par with that of the other Candidate who was treating the freemen.*" In the second of those cases(56),*the Candidate and his leading agents had given* DISTINCT *orders*, in the presence and hearing of all those persons who were engaged in the conduct of the election, *that they would allow* NO *treating to take place;* notwithstanding those instructions some of the inferior agents gave orders for breakfasts, and managed a system of treating to a large portion of the electors on their side. The *Candidate* was (in each case) *reported guilty of treating*, BY HIS AGENTS, *and was disqualified.* The other cases of treating *by agents, without*

(55) Clerk, Election Committees, P. 133.
(56) 2 Peckwell, P. 31.

the candidate's knowledge, in that year, and in which such acts were held to disqualify the Candidate, are

1. *Great Yarmouth*,	reported by	P. R. & D.	—P. 6 & 7.
2. *Kinsale*,	"	"	" 23 & 24.
3. *Carlisle*,	"	"	" 59.
4. *Bewdley*,	"	"	" 66, 67 & 70.
5. *Harwich*,	"	"	" 78.
6. 1st *Aylesbury*	"	"	" 87 & 88.
7. *Derby*,	"	"	" 105 & 106.
8. 1st *Horsham*,	"	"	" 109.
9. *Leicester*,	"	"	" 177.
10. 1st *Cheltenham*,	"	"	" 189.
11. 2nd *Sligo*,	"	"	" 213 & 214.
12. 2nd *Aylesbury*,	"	"	" 274 & 275.

In the case of *Middlesex* (57), cited by *Clerk on Election Committees*, P. 129, the Candidate was declared incapacitated on account of *necessary* refreshments having been furnished to his supporters by his agents *without his knowledge* and AT THE EXPENSE *of his agents.*

The purport of those authorities seems, therefore, to be, that any treating however moderate by electioneering agents, after the issuing of the Writ of election, and before the return, one single act of bribery, or one only attempt to bribe, at any period of the election, without the Candidate's knowledge, or even against his orders or at the agent's expense, disqualifies the Candidate from taking or retaining a seat in Parliament. Such being the case, the Sitting Member passes to the easy task of shewing that the evidence now before the Committee brings the Petitioner within the scope of those authorities. So fully did the Sitting Member succeed in establishing his case at the first parish to which the Honorable Commissioner proceeded, that, in order to simplify the matter and to save expense to the Petitioner, the Sitting Member declined proving more than four *corrupt acts*; the conclusive evidence which he was enabled to adduce of those four acts was such as to warrant his dispensing with an investigation into such facts as the very *extraordinary* demand, by a man so wealthy as Dr. Grenier, for a LOAN of money *from the Petitioner's father-*

(57) *Vide* evidence of *Dallaire* before Committee.

in-law to pay a portion of the Petitioner's election expenses. The Sitting Member's evidence of those corrupt acts, to which the notes below refer by the number of the question eliciting it, may be thus summed up:

FIRST FACT.—TREATING *of the electors by authorized* AGENTS.

The Petitioner, *by letter*, appointed Daniel Byrne to be his agent for the late election for Lotbinière in the Parish of Saint Sylvester (58). Mr Byrne was a *paid* agent (59), and acted as such agent at that election in that Parish (60). That agent, conjointly with three sub-agents of the Petitioner, *opened*, in that Parish, a house of public entertainment for the electors of that County in the Petitioner's interest (61). In that open house the electors of that county, in the interest of the Petitioner in that Parish, were supplied with accomodation and refreshments (62).

SECOND FACT.—Bill or Note given by authorized agents to an elector with intent to induce him to abstain from voting for the Sitting Member.

George McCrea, of St. Sylvester, was, at the time of that election, and still is an elector of that county in that parish (63). That agent, Byrne, conjointly with three sub-agents, signed and gave to that elector, McCrea, a *promisory note* for twenty five pounds to keep an open house (64), in the hope that he, McCrea, would remain neutral (65).

THIRD FACT.—Promise, by an authorized agent, of a gratuity to an elector, with intent to induce that elector to vote, and procure votes, for the Petitioner, and cause votes to be withheld from the Sitting Member.

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(58) *Vide* Commissioner's notes, *Questions* 4. 12, 96.
(59) " " " " 72, 76.
(60) " " " " 37, 55, 08, 89, 90.
(61) " " " " 8, 9, 18, 49, 50, 51.
(62) " " " " 52.
(63) " " " " 56,
(64) " " " " 9, 18, 51.
(65) " " " " 19.

John Monaghan, of St. Sylvester, was, at the time of that election, and, still is, an elector of that County in that Parish (66). That agent, Byrne, promised to that elector, Monaghan, the keeping of an open-house, and that he, Monaghan, would be well paid, if he, Monaghan would assist in promoting the Petitioner's election, by procuring votes for the Petitioner, and by causing votes to be withheld from the Sitting Member (67).

FOURTH FACT.—Promise of a *reward* to an elector with intent to induce that elector to vote, and procure votes, for the Petitioner.

John Kane, of St. Sylvester, at the time of that election, was, and acted as, a sub-agent of the Petitioner for the purposes of that election (68); and Francis Macalasher, of the same place, was, at the time of that election, and still is, an elector of that County in that Parish (69). That sub-agent Kane, promised to that elector, Macalasher, that he, Macalasher, would get a *handsome* REWARD, if he would support the Petitioner (70).

Those facts will be found to fall entirely within the scope of the authorities which have already been cited to define bribery and corrupt practices; and, as already seen, there is not wanting in this case evidence to shew that the Petitioner not only was cognisant of such practices, but is only prevented, for the present, from paying the expenses thereof by the existence of the present election contestation (71). Indeed the demeanor of the witness, Byrne, while under examination, and the dropping of certain expressions, which the witness recalled, on considering their importance, would alone be sufficient, could they have been witnessed by the Committee, to have convinced them of that fact.

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(66) *Vide* Commissioner's notes, *Questions*, 41.
(67) " " " " 39, 40, 43, 45.
(68) " " " " 57, 62, 91.
(69) " " " " 87.
(70) " " " " 91.
(71) " " " " 27, 30, 31, 32, 53, 54, 97, 98, 120.